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DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 730, 742, 748, 762, and 772

Docket No. 131018874-3874-01

RIN 0694-AG00

Proposed Revisions to the Support Document Requirements of the Export Administration Regulations in Response to Executive Order 13563 Retrospective Regulatory Review

AGENCY: Bureau of Industry and Security, Department of Commerce.

ACTION: Proposed rule.

SUMMARY: This rule proposes changes to support documents required to be submitted for license applications under the Export Administration Regulations (EAR) and changes to the Bureau of Industry and Security's (BIS's) role in issuing documents for the Import Certificate and Delivery Verification system. This proposed rule would remove the requirement to obtain

an International Import Certificate or Delivery Verification in connection with license applications, require a Statement by Ultimate Consignee and Purchaser for most license applications previously requiring an International Import Certificate, and increase the license application value requirement for obtaining a Statement by Ultimate Consignee and Purchaser. In addition, BIS would cease issuing U.S. Import Certificates or Delivery Verifications for imports into the United States. Finally, this rule revises the structure and description of support document requirements to improve clarity. BIS is proposing these changes in response to public comments received in response to BIS's notice of inquiry on retrospective regulatory review being undertaken under Executive Order 13563.

DATES: Comments must be received by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. The identification number for this rulemaking is **BIS-2014-0009**.
- By e-mail directly to publiccomments@bis.doc.gov. Include RIN 0694-AG00 in the subject line.
- By mail or delivery to Regulatory Policy Division, Bureau of Industry and Security, U.S. Department of Commerce, Room 2099B, 14th Street and Pennsylvania Avenue, NW, Washington, DC 20230. Refer to RIN 0694-AG00.

FOR FURTHER INFORMATION CONTACT: Patricia Muldonian, Office of National Security and Technology Transfer Controls, 202-482-4479, patricia.muldonian@bis.doc.gov. Steven Emme, Office of the Assistant Secretary for Export Administration, 202-482-5491, steven.emme@bis.doc.gov.

SUPPLEMENTARY INFORMATION:

Background

On January 18, 2011, President Barack Obama issued Executive Order 13563 to improve regulation and regulatory review. *See* 76 FR 3821 (Jan. 21, 2011). Among other things, the President stressed the need for the regulatory system to allow for public participation and an open exchange of ideas, as well as to promote predictability and reduce uncertainty. The President also emphasized that regulations must be accessible, consistent, written in plain language, and easy to understand. Under Executive Order 13563, each agency is required to “periodically review its existing significant regulations to determine whether any such regulations should be modified, streamlined, expanded, or repealed so as to make the agency’s regulatory program more effective or less burdensome in achieving the regulatory objectives.” Through a notice of inquiry on this retrospective regulatory review published on August 5, 2011 (76 FR 47527), the Bureau of Industry and Security (BIS) sought comments on aspects of the Export Administration Regulations (EAR) that are not immediately affected by the Export Control Reform initiative and that could improve clarity in the EAR or streamline requirements to improve efficiency and reduce burden.

Among the public comments received, three commenters proposed improvements to aspects of the support document requirements in part 748 of the EAR. Specifically, two commenters suggested removing the requirement to obtain International Import Certificates (ICs) under § 748.10 of the EAR, and one commenter recommended that BIS explicitly allow the use of electronic signatures. After reviewing these comments, BIS proposes to amend the EAR to remove the requirement for ICs under § 748.10, remove the Delivery Verification Certificate (DVs) in § 748.13, change certain prior approval requirements involving support documents to recordkeeping requirements, raise the license application value threshold for requiring the submission of a Statement by Ultimate Consignee and Purchaser, remove language that suggests the preclusion of electronic signatures currently in § 748.11, and streamline the support document requirements to improve clarity. BIS believes that these proposals further the aims of Executive Order 13563 by tailoring the requirements of the EAR to reduce unnecessary burdens imposed on license applicants while continuing to further the national security and foreign policy objectives of the United States.

**Proposal to Remove Requirement to Obtain International Import Certificate or Delivery Verification for Exports, Reexports, or Transfers (In-Country) Subject to the EAR;
Proposal to Eliminate Issuance of U.S. Import Certificate, U.S. Import Certificate with Triangular Transaction Stamp, or Delivery Verification Certificate by BIS**

Background

The current International Import Certificate and Delivery Verification (IC/DV) system is a remnant of the Coordinating Committee on Multilateral Export Controls (COCOM). COCOM was a multilateral organization that restricted strategic exports to controlled countries during the Cold War. On March 31, 1994, COCOM disbanded and was later replaced by the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies. The IC/DV system addressed diversion of items from COCOM countries or countries cooperating with COCOM, and this system has remained in place under the Wassenaar Arrangement.

Under the IC/DV system, the importer in an international transaction is required to certify that it will import the goods into the destination country and will not reexport or otherwise divert the goods without the authorization of the government of the importing country. This certification takes the form of a document issued by the government of the importing country. When goods are exported to the United States, the United States Government may issue a U.S. IC (Form BIS-645P/ATF-4522) for this purpose.

Along with the IC (or other certification used by foreign governments), an importer in an international transaction may be required to have the government of the importing country complete a DV in order to give greater assurance to the exporter's country that the importing country will be aware and thus in a better position to prevent potential diversion. When a DV is required, it is presented together with evidence of entry of the goods for certification by the customs authority of the importing country. The form is then delivered from the importer to the exporter and from the exporter to its export control licensing authority. When goods are

exported to the United States, the United States Government may issue a DV (Form BIS-647P) when requested for this purpose.

As commenters to the notice of inquiry pointed out, while the IC/DV system is intended to prevent diversion and increase awareness among participating countries of potential enforcement concerns, the system's utility has diminished over time. While the IC provides information about the importation of items, it lacks an affirmative statement on the actual end use of the item by the ultimate consignee or end user. Similarly, a DV does not provide the same level of assurance that a pre-license check or post-shipment verification would achieve. This lack of utility and information under the IC/DV system serves little purpose for licensing and enforcement operations. Further, many countries participating in the Wassenaar Arrangement do not require their exporters to obtain an IC from the country of destination for dual-use items. Consequently, the IC/DV system imposes additional burdens on the public and the U.S. Government without achieving the system's intended objectives.

While the U.S. Government has previously attempted to implement changes to the IC/DV system through the Wassenaar Arrangement, the participating countries have not reached a consensus on this issue. Since the IC/DV system is not addressed in the Wassenaar Arrangement Initial Elements and there is no applicable U.S. statutory requirement for the IC/DV system, BIS is initiating, under national discretion, changes to the implementation of the IC/DV system through this proposed rule.

Proposed Changes Impacting License Applications Submitted to BIS

In this proposed rule, BIS proposes to remove the requirement in § 748.10 to obtain an IC for a license application, and instead require that the exporter obtain a Statement by Ultimate Consignee and Purchaser. Under § 748.10, an IC is required for license applications of items controlled for national security reasons valued over \$50,000 that are destined for countries listed in § 748.9(b)(2), with the exception of the People's Republic of China (PRC). This proposed change would treat countries in current § 748.9(b)(2) like most other countries under the current requirements. This proposed change would not, however, apply to the PRC or Argentina. License applications for the PRC would continue to require a PRC End-User Statement, as is currently the case under § 748.10. License applications for Argentina would be treated like most other countries and territories in the Americas and only require a support document for applications involving firearms and related commodities under current § 740.14 of the EAR.

BIS believes that this proposed change would significantly reduce burden and improve timeliness for shipping under an approved license. Currently, U.S. exporters must receive a signed original of the IC prior to shipping commodities under an approved license. As one commenter pointed out, the time necessary to obtain an original IC can be significant. Generally, the U.S. exporter would need to request that the foreign importer obtain an IC from the foreign government, the foreign importer would have to fill out and submit the IC by mail or hand delivery to the foreign government, the foreign government would have to process and certify the IC, the foreign government would have to return the IC by mail to the foreign importer or have the foreign importer pick up the form, the foreign importer would have to mail the certified original to the U.S. exporter, and the IC may have to be translated into English prior to

submission or record retention. Consequently, the current requirement to obtain an IC can put U.S. exporters at a competitive disadvantage since many of the other member states of the Wassenaar Arrangement do not require their own exporters to obtain an IC from other Wassenaar Arrangement member states when importing dual-use items.

To address this time-consuming burden, BIS believes that requiring a Statement by Ultimate Consignee and Purchaser rather than an IC would benefit U.S. exporters. Unlike ICs, Statements by Ultimate Consignee and Purchaser only require the engagement of parties directly involved in the transaction. Further, U.S. exporters currently do not have to wait for an original Statement by Ultimate Consignee and Purchaser before shipping under an approved license so long as the exporter receives the original within 60 days from the date the document is signed by the ultimate consignee. In addition to greatly reducing burden and delays, this proposal would provide greater transparency and information for BIS in processing license applications and for enforcement officials to monitor potential concerns.

To implement these changes for ICs, this proposed rule removes all references to ICs in § 748.9 of the EAR. Further, this proposed rule removes references to ICs in § 748.10 while maintaining the requirements described for the PRC End-User Statement. In addition, since BIS is proposing the removal of the requirement to obtain an IC, this proposed rule also eliminates the need for BIS to request that a DV be obtained from a foreign government for a transaction. As a result, this proposed rule eliminates all current text in § 748.13 of the EAR and Supplement No. 4 to part 748, which lists contact information for the IC/DV authorities of foreign governments.

Proposed Elimination of Issuance of U.S. Import Certificate, U.S. Import Certificate with Triangular Transaction Stamp, and Delivery Verification Certificate by BIS

As described in Supplement No. 5 to part 748, BIS currently issues U.S. ICs or DVs for items subject to the EAR that are controlled for national security reasons or for items subject to the jurisdiction of the Nuclear Regulatory Commission. BIS may also issue a U.S. IC with a triangular transaction stamp when the U.S. importer in a transaction is uncertain whether the items in question will be imported into the United States or knows that the items will not be imported into the United States. As previously mentioned, the issuance of a U.S. IC or DV provides little utility to the U.S. Government or to the foreign country granting an export license as no representation is made by the ultimate consignee or end user on the documents.

Eliminating the review, processing, and issuance of U.S. ICs and DVs will allow BIS to focus its resources on more effective methods to adjudicate license applications and focus its efforts on the risk of diversion. Consequently, under this proposed rule, BIS would cease accepting Form BIS-645P and BIS-647P and thus cease issuing a U.S. IC or DV when requested by a foreign government. Accordingly, this rule proposes to remove and reserve Supplement No. 5 to part 748 and to remove entries for information collections related to ICs and DVs in Supplement No. 1 to part 730.

This proposal would not impact the participation by other agencies of the U.S. Government in the IC/DV system. Currently, the Department of Justice's Bureau of Alcohol, Tobacco, Firearms and Explosives issues U.S. ICs for the permanent import of defense articles described on either the U.S. Munitions List (USML) in 22 CFR part 121 or the U.S. Munitions Import List in 27

CFR part 447. Also, should U.S. Government documentation acknowledging a temporary import of defense articles described on the USML in 22 CFR part 121 be required, U.S. importers may obtain a DSP-61 Application/License for Temporary Import of Unclassified Defense Articles from the Department of State's Directorate of Defense Trade Controls.

Proposal to Increase Value Threshold for Requiring a Statement by Ultimate Consignee and Purchaser

Prior to June 19, 2007, the EAR applied a consistent value threshold of \$5,000 for obtaining a support document for a license application, with the exception of license applications for computers destined for the PRC. On June 19, 2007, BIS published a final rule that increased the value threshold for license applications requiring an IC and for most license applications requiring a PRC End-User Statement. The final rule increased the value threshold from \$5,000 to \$50,000, with the exception of license applications for computers and certain cameras destined for the PRC. The value threshold for a Statement by Ultimate Consignee and Purchaser, however, remained at \$5,000. This change resulted in requiring support documents for more license applications involving close allies and regime partners for items controlled for reasons other than national security than for license applications involving the same items destined for the PRC. As such, BIS believes that the varying value levels add to the complexity of support document requirements without providing a necessary national security or foreign policy rationale.

To address the inconsistency in value threshold, this proposed rule raises the value of license applications requiring a Statement by Ultimate Consignee and Purchaser from \$5,000 to \$50,000. This change would further reduce the burden for U.S. exporters by eliminating a requirement for transactions with controlled items valued between \$5,000 and \$50,000. As is currently required, license applicants may not split an order into multiple license applications in order to avoid the value threshold requiring a Statement by Ultimate Consignee and Purchaser.

Additional proposed changes to part 748 impacting the Statement by Ultimate Consignee and Purchaser are addressed herein.

Proposed Revisions to Part 748 to Improve Clarity of Support Document Requirements

The current framework for describing support document requirements in the EAR is found in §§ 748.9 through 748.14. The proposal to remove the requirement to obtain ICs and DVs affords BIS the opportunity to streamline the framework of the support document requirements and improve clarity. This proposed rule revises § 748.6(a) to provide greater clarity on general instructions for license applications and then revises the framework in current §§ 748.9 through 748.14 as follows:

Proposed § 748.9

Section 748.9 is currently drafted as a decision tree to inform readers when a support document is required for a license application. This framework has led to difficulty in clearly and

efficiently determining whether a support document is required for a specific license application. Under this rule, proposed paragraph (a) provides a general overview of and need for support document requirements. Proposed paragraph (b) outlines when a support document is required for a license application and provides citations to the relevant provision that further describes the specific support document in question. Proposed paragraph (c) details when reexport license applications and transfer (in-country) license applications would require a support document. Proposed paragraph (d) lists exceptions to the requirements to obtain support documents outlined in paragraph (b). Proposed paragraph (e) describes general requirements for the content of all support documents. Proposed paragraph (f) incorporates recordkeeping information currently in § 748.12(e) and addresses returning unused or partially used support documents to foreign importers. Proposed paragraph (g) parallels the language in current § 748.9(h) on the impact of a support document on BIS's review of a license application. Proposed paragraph (h) contains the information on grace periods for compliance following regulatory changes, which is currently in § 748.12(a).

Proposed §§ 748.10 through 748.12

With the removal of ICs and DVs under this proposed rule, the remaining support documents would be described in separate, consecutive sections - § 748.10 for the PRC End-User Statement, § 748.11 for the Statement by Ultimate Consignee and Purchaser, and § 748.12 for import certificates for firearms and related items. This rule also proposes to rename import certificates described in current § 748.14 as FC Import Certificates. This change is being made to reduce

potential ambiguity between the Import Certificate for firearms and related items in current § 748.14 and the IC in current § 748.10.

For each description of the support documents proposed to remain under this rule, BIS is revising and reorganizing the descriptions into parallel, uniform topics in proposed §§ 748.12 through 748.14. Thus, all three sections will provide the requirements for the applicable support document under the following topics – (a) requirement to obtain document, (b) obtaining the document, (c) content of the document, (d) procedures for using document with license application, and (e) recordkeeping. BIS believes this new organization should allow readers to more readily identify the applicable requirements for each support document.

Proposed § 748.10

Currently, § 748.10 combines requirements for ICs and PRC End-User Statements. This proposed rule revises § 748.10 to remove all references to ICs and make this section applicable to PRC End-User Statements only. Under this proposed rule, paragraph (a) separates the three combinations of commodity and value thresholds requiring a PRC End-User Statement rather than listing all three in one paragraph. In addition, this proposed rule attempts to tighten the language of the requirements to make clear the applicability of the value thresholds. For example, if a license application is submitted to export cameras controlled under ECCN 6A003 to the PRC, the value of the 6A003 cameras must be over \$5,000 to generate a requirement for a PRC End-User Statement. If the same order includes other items that do not require a license, the value of the other items should not be factored in to the \$5,000 value threshold for 6A003

cameras. However, if the license application includes 6A003 cameras valued at, for example, \$4,000 and includes other commodities requiring a license to the PRC valued at \$47,000, a PRC End-User Statement would still be required because the cumulative total of commodities requiring a license to the PRC exceeds \$50,000.

Proposed paragraph (b) provides information in current § 748.10(c)(1) and Supplement No. 4 to part 748. Proposed paragraph (c) provides information in current § 748.10(c)(2), (c)(3), and (h).

Proposed paragraph (d) largely reflects information in current § 748.9(c), (e), (f), and (h).

Proposed paragraph (e) details the recordkeeping requirements and amends the current procedure in § 748.9(j), which describes the process by which exporters must submit the PRC End-User Statement and other information to BIS for determination on whether a PRC End-User Statement may be returned to the foreign importer. This proposed rule removes the submission requirement and instead adds a recordkeeping obligation, thereby simplifying the process and reducing the burden for both exporters and the U.S. Government.

Specific Changes in Proposed § 748.11

Under this proposed rule, information regarding the Statement by Ultimate Consignee and Purchaser would remain under § 748.11, but this section would be amended to reflect the changes in requirements to obtain a Statement by Ultimate Consignee and Purchaser due to the removal of ICs. Within this section, proposed paragraph (a) describes the revised requirement to obtain a Statement by Ultimate Consignee and Purchaser to reflect that license applications currently requiring an IC under § 748.10 would now require a Statement by Ultimate Consignee

and Purchaser, unless the items are destined for Argentina. To conform to this change, the requirement in proposed paragraph (a) applies to destinations not located in the “Americas.” The proposed definition of “Americas” in part 772, which is derived from the list of countries found in current § 748.9(a)(1), provides the list of countries and territories that are considered to be in the Americas for purposes of the EAR. The definition makes clear, however, that while Cuba would geographically be considered part of the Americas, it does not fall under the definition in part 772 and would thus be subject to the requirement for obtaining a Statement by Ultimate Consignee and Purchaser. Proposed paragraph (a) also describes the limited use of a Statement by Ultimate Consignee and Purchaser for license applications involving the PRC. Currently, § 748.9(b)(2)(i) addresses the use of a Statement by Ultimate Consignee and Purchaser for limited applications involving the PRC. The proposed paragraph (a) also includes a new Note 2 to paragraph (a) that would allow BIS to require applicants to obtain a Statement by Ultimate Consignee and Purchaser for a license application even if one would not otherwise be required. This note would conform to current § 748.10(b)(3)(iii) for ICs and PRC End-User Statements.

Proposed paragraph (b) incorporates text from current § 748.11(c). Proposed paragraph (c) incorporates the current text of § 748.11(d) and (e). Proposed paragraph (d) consolidates text in current §§ 748.9(c)(2), 748.9(e), and 748.11(b). In addition, proposed paragraph (d) changes the current requirement on when to submit a copy of the Statement by Ultimate Consignee and Purchaser with the license application into a recordkeeping requirement. Also, this proposed rule removes references to wording such as “original statement” and “manually signed original” in proposed paragraph (d) to allow for the use of electronic signatures. Proposed paragraph (e) retains the current requirements on recordkeeping in § 748.11(b).

Proposed § 748.12

This proposed rule reorganizes the information in current § 748.12 and generally places such information in proposed §§ 748.9 or 748.13. In its place, this proposed rule moves the information on Import Certificates or equivalent documents for license applications of firearms and related commodities (to be collectively renamed FC Import Certificates) from § 748.14 to § 748.12 to position it next to the requirements for the other support documents in §§ 748.10 and 748.11. With the exception of proposed § 748.12(e), this proposed rule makes no substantive changes to the information in current § 748.14. Proposed § 748.12(e) combines the requirements applicable to returning the Import Certificate or equivalent statement to the foreign importer under current §§ 748.9(j) and 748.14(j) and replaces the submission requirement with a recordkeeping requirement. This is similar to the text proposed in § 748.10(e) for PRC End-User Statements.

Proposed § 748.13

With the proposed removal of the requirement to obtain an IC in § 748.10, this proposed rule also removes the text describing DVs in current § 748.13. This rule proposes to move information on granting exceptions to the support document requirements from current § 748.12(c) and (d) to proposed § 748.13.

Additional Revisions to Part 748

Since this rule proposes to move the section on FC Import Certificates from § 748.14 to § 748.12, this rule proposes to remove and reserve § 748.14. In addition, this rule proposes to remove the table of foreign IC/DV authorities in current Supplement No. 4 to part 748 and replace it with a table providing guidance on support document requirements. This table would serve as guidance only; it is not meant to contravene or supersede the support document requirements described in §§ 748.9 through 748.13. Also, current Supplement No. 5 to part 748 would be removed and reserved since BIS is proposing to no longer issue U.S. ICs or DVs.

Additional Conforming Changes to the EAR

This proposed rule also revises § 742.17 to change a citation reference back to part 748 and update the name of the FC Import Certificate, revises references to the support documents in the recordkeeping requirements of § 762.2, and inserts a definition of “Americas” in § 772.1 for purposes of support document requirements in part 748. This definition updates the list of destinations currently in § 748.9(a)(1).

Export Administration Act

Since August 21, 2001, the Export Administration Act of 1979, as amended, has been in lapse. However, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as amended by Executive Order 13637 of March 8, 2013, 78 FR 16129 (March 13, 2013), and as extended by the Notice of August 8, 2013, 78 FR 49107 (August 12, 2013) has continued the EAR in effect under the International Emergency Economic Powers Act.

BIS continues to carry out the provisions of the Export Administration Act, as appropriate and to the extent permitted by law, pursuant to Executive Order 13222 as amended by Executive Order 13637.

Rulemaking Requirements

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distribute impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This proposed rule is part of BIS's retrospective regulatory review being undertaken under Executive Order 13563. This rule has been determined to be not significant for purposes of Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to, nor is subject to a penalty for failure to comply with, a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid OMB control number. This proposed rule would affect four collection numbers: Approval of Triangular Transactions Involving Commodities Covered by a U.S. Import Certificate (collection number 0694-0009), Delivery Verification Certificate (0694-0016), International Import Certificate (0694-0017), Statement by Ultimate Consignee and Purchaser (0694-0021), and Import Certificates And End-User Certificates (0694-0093).

Under this proposed rule, BIS would cease issuing Import Certificates and Delivery Verifications, which are addressed in collection numbers 0694-0016 and 0694-0017, respectively. This would lead to an annual reduction in burden of 56 hours for 0694-0016 and 52 hours for 0694-0017. With the removal of Import Certificates under 0694-0017, this rule would also remove Import Certificates requiring a Triangular Transaction Stamp, as addressed under collection 0694-0009. BIS has not received a request for approval of a triangular transaction in the past ten years, so the removal of this information collection would result in a reduction of one hour.

Additionally, this proposed rule would amend the requirements for support documents required in conjunction with a license application. Collection number 0694-0093 addresses Import Certificates and End-User Certificates, changes to Import Certificates and End-User Certificates, exception requests to Import Certificates and End-User Certificates, Delivery Verifications, exception requests to Delivery Verifications, and related recordkeeping. This proposed rule would eliminate the requirement for obtaining a Delivery Verification in conjunction with a license application submitted to BIS. This would result in an annual reduction in burden of 361 hours for Delivery Verifications and 0.5 hours for Delivery Verification exception requests. Also, this rule would eliminate the requirement to obtain an Import Certificate in conjunction with a license application. This change would result in the reduction of the following annual burden hour estimates: 354.5 hours for preparing the Import Certificate, 23.6 hours for recordkeeping related to the Import Certificate, 99 hours for changes to Import Certificates, and 7 hours for Import Certificate exception requests.

The proposed changes to support documents required in conjunction with a license application would also impact collection number 0694-0021, which addresses the Statement by Ultimate Consignee and Purchaser. This proposed rule would increase the license application value threshold for requiring a Statement by Ultimate Consignee and Purchaser from \$5,000 to \$50,000. In addition, with the exception of licenses for Argentina, this proposed rule would require obtaining a Statement by Ultimate Consignee and Purchaser for those license applications previously requiring an Import Certificate. These proposed changes result in a net increase of 135.7 burden hours measured under collection number 0694-0021.

3. This rule does not contain policies with Federalism implications as that term is defined under E.O. 13132.

4. The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*, generally requires an agency to prepare an initial regulatory flexibility analysis (IRFA) for any rule subject to the notice and comment rulemaking requirements under the Administrative Procedure Act (5 U.S.C. 553) or any other statute. However, under section 605(b) of the RFA, if the head of an agency certifies that a rule will not have a significant impact on a substantial number of small entities, the RFA does not require the agency to prepare a regulatory flexibility analysis. BIS does not collect data on the size of entities that apply for and are issued export licenses. Although BIS is unable to estimate the exact number of small entities that would be affected by this rule, it acknowledges that this rule would affect some unknown number by reducing the burden of having to obtain

certain support documents for certain license applications. Therefore, the impact on any affected small entities will be wholly positive. Pursuant to section 605(b), the Chief Counsel for Regulation, Department of Commerce, submitted a memorandum to the Chief Counsel for Advocacy, Small Business Administration, certifying that this proposed rule, if promulgated, will not have a significant impact on a substantial number of small entities.

List of Subjects

15 CFR Part 730

Administrative practice and procedure, Advisory committees, Exports, Reporting and recordkeeping requirements, Strategic and critical materials.

15 CFR Part 742

Exports, Terrorism.

15 CFR Part 748

Administrative practice and procedure, Exports, Reporting and recordkeeping requirements.

15 CFR Part 762

Administrative practice and procedure, Business and industry, Confidential business information, Exports, Reporting and recordkeeping requirements.

15 CFR Part 772

Exports.

For the reasons stated in the preamble, the Bureau of Industry and Security proposes to amend the Export Administration Regulations, 15 CFR parts 730, 742, 748, 762, and 772, as follows:

PART 730 – [AMENDED]

1. The authority citation for part 730 continues to read as follows:

AUTHORITY: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c; 22 U.S.C. 2151 note; 22 U.S.C. 3201 *et seq.*; 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 15 U.S.C. 1824a; 50 U.S.C. app. 5; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; E.O. 11912, 41 FR 15825, 3 CFR, 1976 Comp., p. 114; E.O. 12002, 42 FR 35623, 3 CFR, 1977 Comp., p. 133; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12214, 45 FR 29783, 3 CFR, 1980 Comp., p. 256; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12854, 58 FR 36587, 3 CFR, 1993 Comp., p. 179; E.O. 12918, 59 FR 28205, 3 CFR, 1994 Comp., p. 899; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 12947, 60 FR 5079, 3 CFR, 1995 Comp., p. 356; E.O. 12981, 60 FR 62981, 3 CFR, 1995 Comp., p. 419; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp., p. 219; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; E.O. 13338, 69 FR 26751, 3 CFR, 2004 Comp., p. 168; E.O. 13637 of March 8, 2013, 78 FR 16129 (March 13, 2013); Notice of January 17, 2013, 78 FR 4303 (January 22, 2013); Notice of May 7, 2013, 78 FR 27301 (May 9, 2013); Notice of August 8, 2013, 78 FR 49107 (August 12, 2013); Notice of September 18, 2013, 78 FR 58151 (September 20, 2013); Notice of November 7, 2013, 78 FR 67289 (November 12, 2013).

2. Supplement No. 1 to part 730 is amended by removing the rows for collection numbers 0694-0009, 0694-0016, and 0694-0017.

PART 742 – [AMENDED]

3. The authority citation for part 742 continues to read as follows:

AUTHORITY: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.*; 22 U.S.C. 7210; Sec. 1503, Pub. L. 108–11, 117 Stat. 559; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Presidential Determination 2003–23 of May 7, 2003, 68 FR 26459, May 16, 2003; Notice of August 8, 2013, 78 FR 49107 (August 12, 2013); Notice of November 7, 2013, 78 FR 67289 (November 12, 2013).

4. Section 742.17 is amended by:

- a. Revising the last sentence of paragraph (a);
- b. Revising “Import Certificate” to read “FC Import Certificate” in paragraph (b); and
- c. Revising paragraph (g).

The revisions read as follows:

§ 742.17 Exports of firearms to OAS member countries.

(a) *** Licenses will generally be issued on a Firearms Convention (FC) Import Certificate or equivalent official document, satisfactory to BIS, issued by the government of the importing OAS member country.

* * * * *

(g) *Validity period for licenses.* Although licenses generally will be valid for a period of four years, your ability to ship items that require an FC Import Certificate or equivalent official document under this section may be affected by the validity of the FC Import Certificate or equivalent official document (see § 748.12(d)(4) of the EAR).

PART 748 – [AMENDED]

5. The authority citation for part 748 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 8, 2013, 78 FR 49107 (August 12, 2013).

6. Revise § 748.6(a) to read as follows:

§ 748.6 General instructions for license applications.

(a) *Instructions.* (1) General instructions for filling out license applications are in Supplement No. 1 to this part.

(2) License applications may require additional information due to the type of items requested in the application or the characteristics of the transaction. Special instructions for applications requiring such additional information are listed in § 748.8 and described fully in Supplement No. 2 to this part.

(3) License applications may also require additional information for evaluation of the parties in the transaction. Special instructions for applications requiring such additional information are listed in §§ 748.9 through 748.13. Additional guidance for determining requirements is located in Supplement No. 4 to this part.

* * * * *

7. Revise § 748.9 to read as follows:

§ 748.9 Support documents for evaluation of foreign parties in license applications.

(a) *Scope.* License applicants may be required to obtain support documents concerning the foreign parties and the disposition of the items intended for export or reexport. Some support documents are issued by foreign governments, while other support documents are signed and issued by the purchaser and/or ultimate consignee. For support documents issued by foreign governments, any foreign legal restrictions or obligations exercised by the government issuing the support document is in addition to the conditions and restrictions placed on the transaction by

BIS. However, the laws and regulations of the United States are in no way modified, changed, or superseded by the issuance of a support document by a foreign government.

(b) *Requirements to obtain support documents for export license applications.* Unless an exception in paragraph (d) of this section applies, a support document is required for the following export license applications:

(1) *License applications for exports to the People's Republic of China (PRC).* License applications for commodities ultimately destined for the PRC require a PRC End-User Statement for certain transactions. Under narrow circumstances, a Statement by Ultimate Consignee and Purchaser may be substituted for a PRC End-User Statement. See §§ 748.10 and 748.11(a)(2) for specific requirements.

(2) *License applications for exports of firearms and related commodities to member countries of the Organization of American States (OAS).* License applications for firearms or related commodities classified under ECCN 0A984, 0A986, or 0A987 require a Firearms Convention (FC) Import Certificate when such commodities are destined for a member country of the OAS. See § 748.12 for specific requirements.

(3) *License applications for exports to all other destinations that are not countries or territories located in the "Americas."* License applications for commodities requiring a license for any reason on the Commerce Control List may require a Statement by Ultimate Consignee and Purchaser if the items are ultimately destined for a country (other than the PRC) or a

territory that is not located in the “Americas.” See § 748.11 for specific requirements and § 772.1 for the definition of “Americas.”

NOTE TO PARAGRAPH (b): For End-Use Certificate requirements under the Chemical Weapons Convention, see § 745.2 of the EAR.

(c) Requirement to obtain support documents for reexport or transfer (in-country) license applications. If a support document would be required for an export from the United States under paragraph (b) of this section, then the same support document would also be required for license applications to reexport or transfer (in-country) if the final destination is a country in Country Group D:1 or E:1.

(d) Exceptions to requirements to obtain support documents. (1) Even if a support document requirement exists in paragraphs (b) or (c) of this section, no support document is required for any of the following situations:

(i) The ultimate consignee or purchaser is a foreign government(s) or foreign government agency(ies), other than the government of the People's Republic of China. To determine whether the parties in a transaction meet the definition of “foreign government agency,” refer to the definition contained in part 772 of the EAR. If either the ultimate consignee or purchaser is not a foreign government or foreign government agency, however, a support document may still be required from the nongovernmental party;

(ii) The license application is filed by, or on behalf of, a relief agency registered with the Advisory Committee on Voluntary Foreign Aid, U.S. Agency for International Development, for export to a member agency in the foreign country;

(iii) The license application is submitted for commodities for temporary exhibit, demonstration, or testing purposes;

(iv) The license application is submitted for commodities controlled for short supply reasons (see part 754 of the EAR);

(v) The license application is submitted under the Special Comprehensive License procedure described in part 752 of the EAR;

(vi) The license application is submitted for software or technology; or

(vii) The license application is submitted for encryption commodities controlled under ECCN 5A002 or 5B002.

(2) BIS will consider granting an exception to the requirement for obtaining a support document where the requirements cannot be met due to circumstances beyond the applicant's control. An exception will not be granted contrary to the objectives of the U.S. export control laws and regulations. Refer to § 748.13 of this part for specific instructions on procedures for requesting an exception.

(e) *Content of support documents.* In addition to specific requirements described for each support document in §§ 748.10, 748.11, and 748.12, the use and submission of support documents must comply with the following requirements.

(1) *English translation.* All abbreviations, coded terms, or other expressions on support documents having special significance in the trade or to the parties to the transaction must be explained on an attachment to the document. Documents in a language other than English must be accompanied by an attachment giving an accurate English translation, either made by a translating service or certified by the applicant to be correct. Explanations or translations should be provided on a separate piece of paper, and not entered on the support documents themselves.

(2) *Responsibility for full disclosure.* (i) Information contained in a support document cannot be construed as extending or expanding or otherwise modifying the specific information supplied in a license application or license issued by BIS. The license application covering the transaction discloses all facts pertaining to the transaction. The authorizations contained in the resulting license are not extended by information contained in the support document regarding reexport from the country of destination, transfer (in-country), or any other facts relative to the transaction that are not reported on the license application.

(ii) Misrepresentations, either through failure to disclose facts, concealing a material fact, or furnishing false information, may subject responsible parties to administrative or criminal action by BIS.

(iii) In obtaining the required support document, the applicant is not relieved of the responsibility for full disclosure of any other information concerning the ultimate destination and end use, end user of which the applicant knows, even if inconsistent with the representations made in the applicable support document. The applicant is responsible for promptly notifying BIS of any change in the facts contained in the support document that comes to the applicant's attention.

(f) *Recordkeeping provisions.* (1) License applicants must retain on file the original copy of any support document issued in support of a license application submitted to BIS. All recordkeeping provisions in part 762 apply to this requirement, except that reproductions may not be substituted for the officially authenticated, original support document. To ensure compliance with this recordkeeping requirement, BIS may require applicants, on a random basis, to submit specific original certificates and statements that have been retained on file. Applicants will be notified in writing of any such request.

(2) See §§ 748.10(e)(2) and 748.12(e)(2) for recordkeeping requirements for returning support documents issued by foreign governments.

(g) *Effect on license application review.* BIS reserves the right in all respects to determine to what extent any license will be issued covering items for which a support document has been issued. If a support document was issued by a foreign government, BIS will not seek or undertake to give consideration to recommendations from the foreign government as to the

action to be taken on a license application. A support document will be only one of the factors upon which BIS will base its licensing action, since end uses and other considerations are important factors in the decision making process.

(h) *Grace period for complying with requirements following regulatory change.* (1) Whenever the requirement for an End-User Statement, Statement by Ultimate Consignee or Purchaser, or Import Certificate is imposed or extended by a change in the regulations, the license application need not conform to the new support documentation requirements for a period of 45 days after the effective date of the regulatory change published in the Federal Register.

(2) License applications filed during the 45 day grace period must be accompanied by any evidence available to the applicant that will support representations concerning the ultimate consignee, ultimate destination, and end use, such as copies of the order, letters of credit, correspondence between the applicant and ultimate consignee, or other documents received from the ultimate consignee. Applicants must also identify the regulatory change (including its effective date) that justifies exercise of the 45 day grace period.

8. Revise § 748.10 to read as follows:

§ 748.10 People's Republic of China (PRC) End-User Statement.

(a) *Requirement to obtain document.* Unless the provisions of §§ 748.9(d) or 748.11(a)(2) apply, a PRC End-User Statement is required for any of the following license applications for commodities destined for China:

(1) The license application includes cameras classified under ECCN 6A003 and the value of such cameras exceeds \$5,000;

(2) The license application includes computers requiring a license for any reason on the Commerce Control List, regardless of the value of the computers; or

(3) The license application includes any commodity(ies) requiring a license for any reason on the Commerce Control List, and the value of the commodity(ies) requiring a license exceeds \$50,000.

NOTE 1 TO PARAGRAPH (a): If an order meets the commodity(ies) and value requirements listed above, then a PRC End-User Statement is required. An order may not be split into multiple license applications solely to avoid a requirement to obtain a PRC End-User Statement.

NOTE 2 TO PARAGRAPH (a): If an order includes both items that do require a license to the PRC and items that do not require a license to the PRC, the value of the latter items should not be factored in to the value thresholds described above. Also, if a license application includes 6A003 cameras and other items requiring a license to the PRC, then the value of the 6A003 cameras should be factored into the value threshold described in paragraph (a)(3).

NOTE 3 TO PARAGRAPH (a): On a case-by-case basis, BIS may require license applicants to obtain a PRC End-User Statement for a license application that would not otherwise require a PRC End-User Statement under the requirements of paragraph (a) of this section.

(b) *Obtaining the document.* (1) If a PRC End-User Statement is required for any reason under paragraph (a) of this section, then applicants must request that the importer obtain a PRC End-User Statement for all items on a license application that require a license to the PRC for any reason listed on the CCL. Applicants must obtain the original PRC End-User Statement from the importer.

(2) PRC End-User Statements are issued and administered by the Ministry of Commerce; Department of Mechanic, Electronic and High Technology Industries; Export Control Division I; Chang An Jie No. 2; Beijing 100731 China; Phone: (86)(10) 6519 7366 or 6519 7390; Fax: (86)(10) 6519 7543; <http://cys.mofcom.gov.cn/ag/ag.html>.

(c) *Content of the document.*(1) The license applicant's name must appear on the PRC End-User Statement submitted to BIS as the applicant, supplier, or order party.

(2) License applicants must ensure that the following information is included on the PRC End-User Statement signed by an official of the Department of Mechanic, Electronic and High Technology Industries, Export Control Division I, of the PRC Ministry of Commerce (MOFCOM), with MOFCOM's seal affixed to it:

- (i) Title of contract and contract number (optional);
- (ii) Names of importer and exporter;
- (iii) End user and end use;
- (iv) Description of the commodity, quantity and dollar value; and
- (v) Signature of the importer and date.

(3) After a support document is issued by MOFCOM, no corrections, additions, or alterations may be made on the document by any person. If a license applicant desires to explain any information contained on the statement, the applicant may include a signed letter of explanation as part of the application.

NOTE TO PARAGRAPH (c): The license applicant should furnish the consignee with the commodity description contained in the CCL to be used in applying for the PRC End-User Statement. It is also advisable to furnish a manufacturer's catalog, brochure, or technical specifications if the commodity is new.

(d) *Procedures for using document with license application—(1) Timing for obtaining PRC End-User Statement and submitting license application.* License applicants must obtain a PRC End-

User Statement prior to submitting the license application. Applicants, however, may submit the license application upon receipt of a facsimile or other legible copy of the PRC End-User Statement, provided that no shipment is made against any issued license prior to receipt of the original PRC End-User Statement.

(2) *Information necessary for license application.* License applicants should not submit the original or copy of the PRC End-User statement with the license application. Rather, applicants must indicate “Import/End-User Certificate” in Block 7 of the application with an “X” in the appropriate box. In addition, applicants must identify China as the originating country and input the number of the PRC End-User Statement in Block 13 of the application. If a license application is submitted without either the correct Block or Box marked on the application and no exception request is made pursuant to § 748.13, the license application will be immediately returned without action.

(3) *Using a PRC End-User Statement for multiple applications.* A PRC End-User Statement may cover more than one purchase order and more than one item. Where the Statement includes items for which more than one license application will be submitted, you must include in Block 24 on your application, or in an attachment to each license application submitted against the Statement, the following certification:

I (We) certify that the quantities of items shown on this license application, based on the PRC End-User Statement identified in Block 13 of this license application, when added to the quantities shown on all other license applications submitted to BIS based on the

same PRC End-User Statement, do not total more than the total quantities shown on the above cited PRC End-User Statement.

(4) *Alterations.* After a PRC End-User Statement is issued by the Government of the People's Republic of China, no corrections, additions, or alterations may be made on the certificate by any person. If an applicant desires to explain any information contained on the certificate, the applicant may submit a signed statement describing such information as part of the license application.

(5) *Validity period.* (i) When a PRC End-User Statement is required to support one or more license applications, an applicant must submit the first license application within the validity period shown on the PRC End-User Statement or 6 months from the date the PRC End-User Statement was signed, whichever is shorter.

(ii) All subsequent license applications supported by the same PRC End-User Statement must be submitted to BIS within one year from the date the first license application supported by the same PRC End-User Statement was submitted to BIS.

(e) *Recordkeeping—(1) General requirement.* Original PRC End-User Statements used to support license applications must be retained on file by the applicant. All recordkeeping provisions in part 762 apply to this requirement, except that reproductions may not be substituted for the officially authenticated, original PRC End-User Statement.

(2) *Returning PRC End-User Statement to foreign importer.* A foreign importer may request that an unused or partially used PRC End-User Statement be returned. In such circumstances, the PRC End-User Statement may be returned to the foreign importer provided that the applicant makes a copy of the PRC End-User Statement and attaches to it a printout or copy of each license covered by the PRC End-User Statement as well as a letter of explanation citing the foreign importer's request for return of the PRC End-User Statement, the license number(s) that have been issued against the PRC End-User Statement (including both outstanding and expired licenses), and a statement that the PRC End-User Statement cannot be used in connection with another license application. The copies of the PRC End-User Statement, license(s), and attached letter of explanation must be retained on file along with the correspondence with the foreign importer in accordance with the recordkeeping provisions in part 762 of the EAR.

9. Revise § 748.11 to read as follows:

§ 748.11 Statement by Ultimate Consignee and Purchaser

(a) *Requirement to obtain document*—(1) *General requirement for all countries excluding the PRC.* Unless an exception in § 748.9(d) or paragraph (a)(3) of this section applies, a Statement by Ultimate Consignee and Purchaser is required if:

(i) The license application includes item(s) requiring a license for any reason on the Commerce Control List and such item(s) are valued at over \$50,000; and

(ii) The items are destined for a country or territory other than the PRC or the “Americas” (see § 772.1 for the definition of “Americas”).

(2) *Permissive substitute of Statement by Ultimate Consignee and Purchaser in place of PRC End-User Statement.* The requirement to obtain a support document for license applications involving the PRC is generally determined by § 748.10(a) of the EAR. However, a Statement by Ultimate Consignee and Purchaser may be substituted in place of a PRC End-User Statement when the commodities to be exported (i.e., replacement parts and sub-assemblies) are valued at \$75,000 or less and are for servicing previously exported commodities.

(3) *Exception to general requirement.* The general requirement described in paragraph (a)(1) of this section does not apply if the applicant is the same person as the ultimate consignee, provided the required statements are contained in Block 24 on the license application. This exemption does not apply, however, where the applicant and consignee are separate entities, such as parent and subsidiary, or affiliated or associated firms.

NOTE 1 TO PARAGRAPH (a): If an order meets the destination and value requirements listed above, then a Statement by Ultimate Consignee and Purchaser is required. An order may not be split into multiple license applications solely to avoid a requirement to obtain a Statement by Ultimate Consignee and Purchaser.

NOTE 2 TO PARAGRAPH (a): On a case-by-case basis, BIS may require license applicants to obtain a Statement by Ultimate Consignee and Purchaser for a license application that would not otherwise require a Statement by Ultimate Consignee and Purchaser under the requirements of paragraph (a) of this section.

(b) *Obtaining the document.* (1) The ultimate consignee and purchaser must complete either a statement on company letterhead, as described in paragraph (c)(1) of this section, or Form BIS-711, Statement by Ultimate Consignee and Purchaser, as described in paragraph (c)(2) of this section. Unless otherwise specified, any reference in this section to “Statement by Ultimate Consignee and Purchaser” applies to both the statement on company letterhead and to Form BIS-711.

(2) If the consignee and purchaser elect to complete the statement on letterhead and both the ultimate consignee and purchaser are the same entity, only one statement is necessary.

(3) If the ultimate consignee and purchaser are separate entities, separate statements must be prepared and signed.

(4) If the ultimate consignee and purchaser elect to complete Form BIS-711, only one Form BIS-711 (containing the signatures of the ultimate consignee and purchaser) need be completed.

(5) Whether the ultimate consignee and purchaser sign a written statement or complete Form BIS-711, the following constraints apply:

(i) Responsible officials representing the ultimate consignee or purchaser must sign the statement. “Responsible official” is defined as someone with personal knowledge of the information included in the statement, and authority to bind the ultimate consignee or purchaser for whom they sign, and who has the power and authority to control the use and disposition of the licensed items.

(ii) The authority to sign the statement may not be delegated to any person (agent, employee, or other) whose authority to sign is not inherent in his or her official position with the ultimate consignee or purchaser for whom he or she signs. The signing official may be located in the United States or in a foreign country. The official title of the person signing the statement must also be included.

(iii) The consignee and/or purchaser must submit information that is true and correct to the best of their knowledge and must promptly send a new statement to the applicant if changes in the facts or intentions contained in their statement(s) occur after the statement(s) have been forwarded to the applicant. Once a statement has been signed, no corrections, additions, or alterations may be made. If a signed statement is incomplete or incorrect in any respect, a new statement must be prepared, signed and forwarded to the applicant.

(c) *Content of the document.* If a statement on company letterhead will be obtained to meet the requirement of paragraph (a) of this section, follow the requirements described in paragraph (c)(1) of this section. If Form BIS-711 will be obtained to meet the requirement of paragraph (a) of this section, follow the requirements described in paragraph (c)(2) of this section.

(1) *Statement on company letterhead.* Information in response to each of the following criteria must be included in the statement. If any information is unknown, that fact should be disclosed in the statement. Preprinted information supplied on the statement, including the name, address, or nature of business of the ultimate consignee or purchaser appearing on the letterhead or order form is acceptable but will not constitute evidence of either the signer's identity, the country of ultimate destination, or end use of the items described in the license application.

(i) *Paragraph 1.* One of the following certifications must be included depending on whether the statement is proffered in support of a single license application or multiple license applications:

(A) *Single.* This statement is to be considered part of a license application submitted by [name and address of applicant].

(B) *Multiple.* This statement is to be considered a part of every license application submitted by [name and address of applicant] until two years from the date this statement is signed.

(ii) *Paragraph 2.* One or more of the following certifications must be included.

Note that if any of the facts related to the following statements are unknown, this must be clearly stated.

(A) The items for which a license application will be filed by [name of applicant] will be used by us as capital equipment in the form in which received in a manufacturing process in [name of country] and will not be reexported or incorporated into an end product.

(B) The items for which a license application will be filed by [name of applicant] will be processed or incorporated by us into the following product(s) [list products] to be manufactured in [name of country] for distribution in [list name of country or countries].

(C) The items for which a license application will be filed by [name of applicant] will be resold by us in the form in which received for use or consumption in [name of country].

(D) The items for which a license application will be filed by [name of applicant] will be reexported by us in the form in which received to [name of country or countries].

(E) The items received from [name of applicant] will be [describe use of the items fully].

(iii) *Paragraph 3.* The following two certifications must be included:

(A) The nature of our business is [possible choices include: broker, distributor, fabricator, manufacturer, wholesaler, retailer, value added reseller, original equipment manufacturer, etc.].

(B) Our business relationship with [name of applicant] is [possible choices include; contractual, franchise, distributor, wholesaler, continuing and regular individual business, etc.] and we have had this business relationship for [number of years].

(iv) *Paragraph 4.* The final paragraph must include all of the following certifications:

(A) We certify that all of the facts contained in this statement are true and correct to the best of our knowledge and we do not know of any additional facts that are inconsistent with the above statements. We shall promptly send a replacement statement to [name of the applicant] disclosing any material change of facts or intentions described in this statement that occur after this statement has been prepared and forwarded to [name of applicant]. We acknowledge that the making of any false statement or concealment of any material fact in

connection with this statement may result in imprisonment or fine, or both, and denial, in whole or in part, of participation in U.S. exports or reexports.

(B) Except as specifically authorized by the U.S. Export Administration Regulations, or by written approval from the Bureau of Industry and Security, we will not reexport, resell, or otherwise dispose of any items approved on a license supported by this statement:

(1) To any country not approved for export as brought to our attention by the exporter; or

(2) To any person if there is reason to believe that it will result directly or indirectly in disposition of the items contrary to the representations made in this statement or contrary to the U.S. Export Administration Regulations.

(C) We understand that acceptance of this statement as a support document cannot be construed as an authorization by BIS to reexport or transfer (in country) the items in the form in which received even though we may have indicated the intention to reexport or transfer (in country), and that authorization to reexport (or transfer in country) is not granted in an export license on the basis of information provided in the statement, but as a result of a specific request in a license application.

(2) *Form BIS-711*. Form BIS-711 is available at <http://www.bis.doc.gov/index.php/component/rsform/form/21-request-bis-forms?task=forms.edit>. Instructions on completing Form BIS-711 are contained in Supplement No. 3 to this part. The ultimate consignee and purchaser may sign a legible copy of Form BIS-711. It is not necessary to require the ultimate consignee and purchaser to sign an original Form BIS-711, provided all information contained on the copy is legible.

(d) *Procedures for using document with license application—(1) Timing for obtaining Statement by Ultimate Consignee and Purchaser and submitting license application—(i)* A license application may be submitted upon receipt of a facsimile or other legible copy of the signed statement.

(ii) All subsequent license applications supported by the same Statement by Ultimate Consignee and Purchaser must be submitted within two years of the first application if the statement was completed as a single transaction statement. If the statement was completed as a multiple transaction statement, all applications must be submitted within two years of signature by the consignee or purchaser, whichever was last.

(2) *Information necessary for license application.* (i) Applicants are not required to submit a copy of the statement with the application. The applicant should, however, mark the correct Box in Block 7 of the license application to notify BIS that a copy of the statement is on file with the applicant.

(ii) If a license application is submitted without either the correct Block or Box marked on the application and no exception request is made pursuant to § 748.13, the license application will be immediately returned without action.

(3) *Validity period.* (i) When a Statement by Ultimate Consignee and Purchaser is required to support one or more license applications, an applicant must submit the first license application within 6 months from the date the statement was signed, whichever is shorter.

(ii) All subsequent license applications supported by the same Statement by Ultimate Consignee and Purchaser must be submitted within two years of the first application if the statement was completed as a single transaction statement. If the statement was completed as a multiple transaction statement, all applications must be submitted within two years of signature by the consignee or purchaser, whichever was last.

(e) *Recordkeeping.* The applicant must, upon receipt, retain the signed statement, and both the ultimate consignee and purchaser should retain a copy of the statement in accordance with the recordkeeping provisions contained in part 762 of the EAR.

10. Revise § 748.12 to read as follows:

§ 748.12 Firearms Convention (FC) Import Certificate.

(a) *Requirement to obtain document.* Unless an exception in § 748.9(d) applies, an FC Import Certificate is required for license applications for firearms and related commodities, regardless of value, that are destined for member countries of the Organization of American States (OAS). This requirement is consistent with the OAS Model Regulations described in § 742.17.

(1) *Items subject to requirement.* Firearms and related commodities are those commodities controlled for “FC Column 1” reasons under ECCNs 0A984, 0A986, or 0A987.

(2) *Countries subject to requirement.* (i) OAS member countries include: Antigua and Barbuda, Argentina, Bahamas, Barbados, Belize, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Dominica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Suriname, Trinidad and Tobago, Uruguay, and Venezuela.

(ii) [Reserved]

(3) *Equivalent official document in place of FC Import Certificate.* For those OAS member countries that have not yet established or implemented an FC Import Certificate procedure, BIS will accept an equivalent official document (e.g., import license or letter of authorization) issued by the government of the importing country as supporting documentation for the export of firearms.

(b) *Obtaining the document.* Applicants must request that the importer (e.g., ultimate consignee or purchaser) obtain the FC Import Certificate or an equivalent official document from the government of the importing country, and that it be issued covering the quantities and types of firearms and related items that the applicant intends to export. (See Supplement No. 6 to this part for a list of the OAS member countries' authorities administering the FC Import Certificate System.) Upon receipt of the FC Import Certificate or its official equivalent, the importer must provide the original or a certified copy of the FC Import Certificate or the original or a certified copy of the equivalent official document to the license applicant. The license applicant shall obtain the required documents prior to submitting a license application, except as provided in paragraphs (d)(2)(i) and (d)(2)(ii) of this section.

(c) *Content of the document.* The FC Import Certificate or its official equivalent must contain the following information:

(1) Applicant's name and address. The applicant may be either the exporter, supplier, or order party.

(2) FC Import Certificate Identifier/Number.

(3) Name of the country issuing the certificate or unique country code.

(4) Date the FC Import Certificate was issued, in international date format (e.g., 24/12/12 (24 December 2012), or 3/1/99 (3 January 1999)).

(5) Name of the agency issuing the certificate, address, telephone and facsimile numbers, signing officer name, and signature.

(6) Name of the importer, address, telephone and facsimile numbers, country of residence, representative's name if commercial or government body, citizenship, and signature.

(7) Name of the end user(s), if known and different from the importer, address, telephone and facsimile numbers, country of residence, representative's name if commercial (authorized distributor or reseller) or government body, citizenship, and signature. Note that BIS does not require the identification of each end user when the firearms and related commodities will be resold by a distributor or reseller if unknown at the time of export.

(8) Description of the commodities approved for import including a technical description and total quantity of firearms, parts and components, ammunition and parts.

NOTE TO PARAGRAPH (c)(8): You must furnish the consignee with a detailed technical description of each commodity to be given to the government for its use in issuing the FC Import Certificate. For example, for shotguns, provide the type, barrel length, overall length, number of shots, the manufacturer's name, the country of manufacture, and the serial number for each shotgun. For ammunition, provide the caliber, velocity and force, type of bullet, manufacturer's name and country of manufacture.

(9) Expiration date of the FC Import Certificate in international date format (e.g., 24/12/12) or the date the items must be imported, whichever is earlier.

(10) Name of the country of export (i.e., United States).

(11) Additional information. Certain countries may require the tariff classification number, by class, under the Brussels Convention (Harmonized Tariff Code) or the specific technical description of a commodity. For example, shotguns may need to be described in barrel length, overall length, number of shots, manufacturer's name and country of manufacture. The technical description is not the Export Control Classification Number (ECCN).

(d) Procedures for using document with license application—(1) Timing for obtaining FC Import Certificate and submitting license application. An FC Import Certificate or equivalent official document can only be used to support one license application. An applicant may submit an application before obtaining the original or certified copy of the FC Import Certificate, or the official original or certified copy of the equivalent document, provided that:

(i) The applicant has received a facsimile or other legible copy of the FC Import Certificate or equivalent official document at the time the license application is filed; and

(ii) The applicant states on the application that a facsimile of the FC Import Certificate or equivalent official document has been received and that no export will be made against the license prior to obtaining the original or certified copy of the FC Import Certificate or

the original or certified copy of the equivalent official document issued by the importing country and retaining it on file. Generally, BIS will not consider any license application for the export of firearms and related commodities if the application is not supported by an FC Import Certificate or its official equivalent. If the government of the importing country will not issue an FC Import Certificate or its official equivalent, the applicant must supply the information described in paragraphs (c)(1) and (c)(6) through (8) of this section on company letterhead.

(2) *Information necessary for license application.* The license application must include the same commodities as those listed on the FC Import Certificate or the equivalent official document. The applicant must clearly note the number and date of the FC Import Certificate or equivalent official document in Block 13 for all export license applications supported by that Certificate or equivalent official document. The applicant must also indicate in Block 7 of the application that the FC Import Certificate or equivalent official document has been received and will be retained on file.

(3) *Alterations.* After an FC Import Certificate or official equivalent document is used to support the issuance of a license, no corrections, additions, or alterations may be made on the FC Import Certificate by any person. If an applicant desires to explain any information contained on the FC Import Certificate or official equivalent document, the applicant may submit a signed statement with a copy of the Import Certificate or official equivalent.

(4) *Validity period.* FC Import Certificates or equivalent official documents issued by an OAS member country will be valid for a period of one year or less. Although licenses generally

are valid for four years, an applicant's ability to export may be affected by the validity of the FC Import Certificate or equivalent official document.

(e) *Recordkeeping*—(1) *General requirement*. The applicant must obtain and retain on file either the original or certified copy of the FC Import Certificate, or an original or certified copy of equivalent official document issued by the government of the importing country in support of any license application for export of firearms and related commodities classified as ECCN 0A984, 0A986, or 0A987. Unless otherwise provided in this paragraph, all other recordkeeping provisions of part 762 of the EAR apply to this requirement.

(2) *Returning FC Import Certificate to foreign importer*. A foreign importer may request that an unused or partially used FC Import Certificate or equivalent official document be returned. In such circumstances, the FC Import Certificate or equivalent official document may be returned to the foreign importer provided that you make a copy of the FC Import Certificate (or official equivalent) and attach to it a copy of the license covered by the FC Import Certificate (or official equivalent) as well as a letter of explanation citing the foreign importer's request for return of the FC Import Certificate (or official equivalent), the license number that has been issued against the FC Import Certificate (or official equivalent), and a statement that the FC Import Certificate (or official equivalent) cannot be used in connection with another license application. The copies of the FC Import Certificate (or official equivalent), license, and attached letter of explanation must be retained on file along with correspondence with the importer in accordance with the recordkeeping provisions in part 762 of the EAR.

11. Revise § 748.13 to read as follows:

§ 748.13 Granting of exceptions to the support documentation requirements.

(a) *Overview.* An exception to obtaining the required support documentation will be considered by BIS; however, an exception will not be granted contrary to the objectives of the U.S. export control program. A request for exception may involve either a single transaction or, where the reason necessitating the request is continuing in nature, multiple transactions. If satisfied by the evidence presented, BIS may waive the support document requirement and accept the license application for processing. Favorable consideration of a request for exception generally will be given in instances where the support document requirement:

(1) Imposes an undue hardship on the applicant or ultimate consignee (e.g., refusal by the foreign government to issue the requisite support document and such refusal constitutes discrimination against the applicant and/or ultimate consignee);

(2) Cannot be complied with (e.g., the commodities will be held in a foreign trade zone or bonded warehouse for subsequent distribution in one or more countries); or

(3) Is not applicable to the transaction (e.g., the items will not be imported for consumption into the named country of destination).

(b) *Procedures for requesting an exception.* (1) Requests for exception must be submitted with the license application to which the request relates. Where the request relates to more than one license application, it should be submitted with the first license application and referred to in Block 24 on any subsequent license application. The request for exception must be submitted in writing on the applicant's letterhead.

(2) In instances where the applicant is requesting an exception from obtaining a PRC End-User Statement under § 748.10 or an FC Import Certificate under § 748.12, the request must be accompanied by a Statement by Ultimate Consignee and Purchaser as described in § 748.11 of this part.

(3) At a minimum, the letter request must include:

(i) Name and address of ultimate consignee;

(ii) Name and address of purchaser, if different from ultimate consignee;

(iii) Location of foreign trade zone or bonded warehouse if the items will be exported to a foreign trade zone or bonded warehouse;

(iv) Type of request, i.e., whether for a single transaction or multiple transactions;

(v) Full explanation of the reason(s) for requesting the exception;

(vi) Nature and duration of the business relationship between the applicant and ultimate consignee and purchaser shown on the license application;

(vii) Whether the applicant has previously obtained or submitted to BIS a support document issued in the name of the ultimate consignee or purchaser, and a list of the Application Control Number(s) to which the certificate(s) applied; and

(viii) Any other facts to justify granting an exception.

(4) *Action by BIS*—(i) *Single transaction request*. Where a single transaction is involved, BIS will act on the request for exception at the same time as the license application with which the request is submitted. In those instances where the related license application is approved, the issuance of the license will serve as an automatic notice to the applicant that the exception was approved. If any restrictions are placed on granting of the exception, these will appear on the approval. If the request for exception is not approved, BIS will advise the applicant.

(ii) *Multiple transactions request*. Where multiple transactions are involved, BIS will advise the applicant of the action taken on the exception request. The response from BIS will contain any conditions or restrictions that BIS finds necessary to impose (including an exception termination date if appropriate). In addition, a written acceptance of these conditions or restrictions may be required from the parties to the transaction.

12. Remove and reserve § 748.14.

13. Revise supplement No. 4 to part 748 to read as follows:

Supplement No. 4 to Part 748 – Guidance on Support Document Requirements for License Applications

Unless an exception under § 748.9(d) applies, a support document may be required for license applications in the following circumstances.

Support Document	Destination	Commodity/Value Requirements	Regulatory Citation(s)
None (unless FC Import Certificate or equivalent official document required below for OAS-member countries)	Countries and territories located in the “Americas” (see definition in § 772.1 of the EAR; definition specifically excludes Cuba)	--	--

<p>FC Import Certificate or equivalent official document</p>	<p><u>Organization of American States:</u> Antigua and Barbuda, Argentina, the Bahamas, Barbados, Belize, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Dominica, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, St. Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Suriname, Trinidad and Tobago, Uruguay, and Venezuela</p>	<p>Firearms and related commodities, regardless of value, controlled under ECCNs 0A984, 0A986, or 0A987</p>	<p>§ 748.12</p>
<p>PRC End-User Statement</p>	<p>People’s Republic of China (PRC)</p>	<p>6A003 cameras valued above \$5,000</p> <hr/> <p>Computers regardless of value</p> <hr/> <p>Commodities requiring a license for any reason on the CCL and valued above \$50,000</p>	<p>§ 748.10 (see also § 748.11(a)(2))</p>

Statement by Ultimate Consignee and Purchaser	All other destinations not listed in this table.	Commodities requiring a license for any reason on the CCL and valued above \$50,000	§ 748.11
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14. Remove and reserve supplement No. 5 to part 748.

PART 762 – [AMENDED]

15. The authority citation for part 762 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 8, 2013, 78 FR 49107 (August 12, 2013).

16. Section 762.2 is amended by:

a. Revising paragraphs (b)(22) and (b)(24); and

b. Removing and reserving paragraph (b)(25).

The revisions read as follows:

§ 762.2 Records to be retained.

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(b) * * *

(22) § 748.10, PRC End-User Statement;

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(24) § 748.12, FC Import Certificate;

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PART 772 – [AMENDED]

17. The authority citation for part 772 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 8, 2013, 78 FR 49107 (August 12, 2013).

18. Section 772.1 is amended by adding the definition for “Americas” in alphabetical order to read as follows:

§ 772.1 Definitions of terms as used in the Export Administration Regulations (EAR).

* * * * *

Americas. (Part 748) For purposes of part 748 of the EAR, the term Americas includes the following countries and territories: Anguilla, Antigua and Barbuda, Argentina, Aruba, Bahamas, Barbados, Belize, Bermuda, Bolivia, Bonaire, Brazil, British Virgin Islands, Canada, Cayman Islands, Chile, Colombia, Costa Rica, Curaçao, Dominica, Dominican Republic, Ecuador, El Salvador, Falkland Islands, French Guiana, Greenland, Grenada, Guadeloupe, Guatemala, Guyana, Haiti, Honduras, Jamaica, Martinique, Mexico, Montserrat, Nicaragua, Panama, Paraguay, Peru, Saint Barthélemy, Saint Kitts and Nevis, Saint Lucia, Saint Martin, Saint Pierre and Miquelon, Saint Vincent and the Grenadines, Sint Maarten, Suriname, Trinidad and Tobago, Turks and Caicos, United States, Uruguay, and Venezuela. This definition also includes locations not listed above that are part of the French West Indies, Leeward and Windward Islands, or Leeward Antilles, but this definition intentionally omits Cuba.

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Dated: April 3, 2014.

Kevin J. Wolf,

Assistant Secretary of Commerce for Export Administration.

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